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# Ong Lai @ Ong Kong Lai v Ketua Pengarah Jabatan Insolvensi Malaysia Wilayah Persekutuan & Ors

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-21NCvC-102–09 OF 2022
ROZ MAWAR J
24 JANUARY 2025

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*Tort — Negligence — Duty of care — Sixteen months after his bankruptcy was annulled plaintiff could not open account with bank as he was still listed as 'bankrupt' in records of Insolvency Department ('ID') — Whether failure of ID and its Director-General ('DG') to ensure that information contained in ID's public-facing system was constantly updated and accurate breached their statutory duties under the Insolvency Act 1967 and their duty of care to the public — Whether ID's and DG's negligence entitled plaintiff to succeed against them on claim for negligence, defamation and damages — Whether Government of Malaysia as ID's principal and DG's employer was vicariously liable for their negligence — Whether absence of malice and qualified privilege failed as defences to plaintiff's claim*

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The plaintiff was a chartered accountant and businessman holding director and shareholder positions in several companies. He was adjudged a bankrupt by the High Court on 24 July 2020. The court annulled his bankruptcy on 7 December 2020. The following day, the second defendant (the Insolvency Department of Malaysia or 'D2') updated its database to reflect the annulment status of the plaintiff. However, on 12 April 2022, the plaintiff found that he could not open a bank account as the bank informed him that its search on his status with D2 revealed that he was still a bankrupt. The plaintiff instructed his lawyers to deal with D2 to resolve the matter. Ultimately, on 18 April 2022, D2 informed the plaintiff that his status in its database had been updated and apologised for the 'technical glitch' in its system that had caused him to be listed as still a bankrupt. Vide the instant action, the plaintiff sued the defendants for negligence and defamation and sought from them general, aggravated/exemplary and punitive damages plus a public apology for damaging his professional reputation, business interests and causing him emotional distress. Apart from stating that they took all reasonable steps to ensure that the information in D2's public-facing records were updated and accurate, the defendants, inter alia, raised the defence of qualified privilege and relied on s 74 of the Insolvency Act 1967 and disclaimers in D2's website to avoid liability.

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**Held**, allowing the plaintiff's claim and ordering the defendants to pay the

plaintiff RM100,000 as general damages and RM20,000 as aggravated damages:

(1) D2's database served as the authoritative source to determine the status of individuals under insolvency proceedings. Financial institutions such as the bank in this case were dependent on the accuracy and timeliness of updates reflected in D2's public-facing system to verify the creditworthiness or legal standing of individuals. Inaccuracies or delays in the public-facing system directly affected the ability of these third parties to make informed decisions (see paras 13 & 20).

(2) D2 had failed in its duty of care to ensure that the plaintiff's status was reflected accurately and timely on its public-facing system. The plaintiff's incorrect status had remained on D2's record for 16 months after the annulment of bankruptcy and was only corrected when the plaintiff brought the error to its attention. This showed a reactive rather than a proactive approach on D2's part, further contributing to the delay in updating the information. The defendants provided no evidence of a mechanism that regularly audited or verified the accuracy of its public-facing search system despite knowing that banks and financial institutions and other third parties relied upon the information contained therein. There was a lack of preventive measure and a failure to mitigate the harm that was caused. The unreasonable delay of 16 months to correct the error as to the plaintiff's status fell below the standard of care expected of D2 (see paras 22–25 & 28).

(3) Although there was no evidence of malice or deliberate intent to harm on the part of the defendants, negligence did not require proof of malice. A lack of bad intention on the part of the defendants did not absolve them of their obligation to act reasonably in maintaining accurate public records (see para 27).

(4) There was a direct causal link between the erroneous bankruptcy status in D2's public-facing system and the plaintiff's inability to open a bank account as well as the harm that was caused to his reputation and business dealings (see para 30).

(5) Being labelled 'bankrupt' was particularly damaging for a chartered accountant with a reputable practice like the plaintiff. It implied financial irresponsibility, dishonor and discreditable conduct. The word 'bankrupt' in its natural and ordinary meaning was defamatory of the plaintiff as it directly imputed financial incapacity and misconduct and tarnished his professional reputation. The defendants' argument that there was only limited circulation of the search result to the bank did not absolve the defendants of liability as defamation law did not require widespread circulation. Communication to one person who understood

its defamatory nature was enough. The limited circulation could only influence the quantum of damages that might be awarded (see paras 32, 34 & 37).

(6) The defence of qualified privilege was inapplicable in this case as the defendants had failed to exercise reasonable care in maintaining accurate records and promptly updating the public-facing system. The 16 month delay in updating the system constituted gross negligence (see para 35).

(7) Pursuant to s 5 of the Government Proceedings Act 1956, the third defendant was vicariously liable as employer of the first defendant and principal of D2 for their failure to carry out their statutory duties under the Insolvency Act 1967 with reasonable care to ensure that the bankruptcy records in the public-facing system were constantly updated and accurate (see para 40).

(8) The plaintiff was awarded RM100,000 as compensation for damage to his professional reputation (including his credibility, integrity and trustworthiness) and the humiliation, emotional distress and professional inconvenience he had suffered whilst RM20,000 was awarded as aggravated damages as the defendants' conduct in failing to rectify the error promptly and showing indifference to the consequences of their negligence had exacerbated the harm caused to the plaintiff. Since there was no evidence of specific financial losses, no special damages were awarded (see paras 43–46).

**[Bahasa Malaysia summary**

Plaintif yang merupakan seorang akauntan bertauliah dan ahli perniagaan yang memegang jawatan pengarah serta pemegang saham dalam beberapa syarikat, telah diisytiharkan bankrap oleh Mahkamah Tinggi pada 24 Julai 2020. Status kebankrapannya telah dibatalkan pada 7 Disember 2020. Pada hari berikutnya, defendan kedua, iaitu Jabatan Insolvensi Malaysia ('D2'), telah mengemaskini pangkalan datanya untuk status pembatalan tersebut. Namun demikian, pada 12 April 2022, plaintif tidak dapat membuka akaun bank apabila dimaklumkan oleh pihak bank bahawa carian statusnya dengan D2 masih menunjukkannya sebagai seorang bankrap. Susulan itu, plaintif telah mengarahkan peguamcaranya untuk berurusan dengan D2 bagi menyelesaikan perkara tersebut. Pada 18 April 2022, D2 kemudiannya memaklumkan kepada plaintif bahawa rekodnya telah dikemaskini dan menjelaskan bahawa 'gangguan teknikal' dalam sistemnya telah menyebabkan statusnya masih tersenarai sebagai seorang bankrap. D2 turut mengemukakan permohonan maaf. Melalui tindakan ini, plaintif telah menyaman semua defendan atas kecuaian dan fitnah, serta menuntut gantirugi am, gantirugi teruk/contoh dan punitif, di samping satu permohonan maaf umum atas kerosakan yang ditimbulkan terhadap reputasi profesionalnya, kepentingan perniagaannya serta tekanan emosi yang dialaminya. Defendan-defendan

menafikan liabiliti dengan menyatakan bahawa mereka telah mengambil semua langkah munasabah untuk memastikan ketepatan rekod yang boleh diakses umum dalam pangkalan data D2. Selain itu, defendan-defendan juga, antara lain, mengemukakan pembelaan keistimewaan bersyarat serta bergantung pada s 74 Akta Insolvensi 1967 dan penafian liabiliti yang diletakkan dalam laman sesawang D2 bagi mengelakkan liabiliti.

**Diputuskan**, membenarkan tuntutan plaintif dan memerintahkan defendan-defendan untuk membayar plaintif'RM100,000 sebagai kerugian am dan RM20,000 sevagai gantirugi teruk:

(1) Pangkalan data D2 berfungsi sebagai sumber berautoriti bagi menentukan status individu di bawah prosiding insolvensi. Institusi kewangan seperti bank dalam kes ini bergantung kepada ketepatan dan ketepatan masa kemaskini yang dipaparkan dalam sistem awam D2 untuk mengesahkan tahap kebolehpercayaan kredit atau kedudukan perundangan seseorang individu. Sebarang ketidaktepatan atau kelewatan dalam sistem awam tersebut memberi kesan secara langsung terhadap keupayaan pihak ketiga untuk membuat keputusan yang berinformasi (lihat perenggan 13 & 20).

(2) D2 telah gagal dalam kewajipan berhati-hatinya untuk memastikan bahawa status plaintif digambarkan dengan tepat dan pada masa yang sewajarnya dalam sistem awamnya. Status yang tidak tepat mengenai plaintif kekal dalam rekod D2 selama 16 bulan selepas pembatalan kebankrapan dan hanya diperbetulkan apabila plaintif membawa kesilapan tersebut kepada perhatian D2. Keadaan ini menunjukkan pendekatan reaktif dan bukannya proaktif di pihak D2, yang seterusnya menyumbang kepada kelewatan dalam mengemaskini maklumat tersebut. Defendan-defendan tidak mengemukakan sebarang bukti mengenai kewujudan mekanisme yang secara berkala mengaudit atau mengesahkan ketepatan sistem carian awamnya walaupun menyedari bahawa bank, institusi kewangan, dan pihak ketiga lain bergantung kepada maklumat yang terkandung di dalamnya. Terdapat kekurangan langkah pencegahan dan kegagalan untuk mengurangkan kemudaratan yang telah berlaku. Kelewatan yang tidak munasabah selama 16 bulan untuk membetulkan kesilapan berhubung status plaintif adalah di bawah standard kewajipan berhati-hati yang dijangkakan daripada D2 (lihat perenggan 22–25 & 28).

(3) Walaupun tiada keterangan mengenai niat jahat atau kesengajaan untuk memudaratkan di pihak defendan, kecuaian tidak memerlukan pembuktian niat jahat. Ketiadaan niat tidak baik di pihak defendan tidak membebaskan mereka daripada kewajipan untuk bertindak secara munasabah dalam menyelenggara rekod awam yang tepat (lihat perenggan 27).

(4) Terdapat hubungan langsung antara status kebankrapan yang salah dalam sistem awam D2 dengan ketidakupayaan plaintif untuk membuka akaun bank serta kemudaratan yang telah menjejaskan reputasi dan urusan perniagaannya (lihat perenggan 30).

(5) Dilabel sebagai 'bankrap' adalah amat memudaratkan bagi seorang akauntan bertauliah dengan amalan profesional yang bereputasi seperti plaintif. Label tersebut membawa maksud ketidakbertanggungjawaban kewangan, penghinaan dan kelakuan yang tidak baik. Perkataan 'bankrap' dalam makna semula jadi dan biasa adalah bersifat memfitnah terhadap plaintif kerana ianya secara langsung membayangkan ketidakmampuan kewangan dan salah laku serta menjejaskan reputasi profesionalnya. Hujahan defendan bahawa hasil carian tersebut hanya diedarkan secara terhad kepada pihak bank tidak membebaskan defendan-defendan daripada liabiliti kerana undang-undang fitnah tidak memerlukan edaran meluas. Komunikasi kepada seorang individu yang memahami sifat fitnah itu sudah memadai. Edaran yang terhad hanya boleh mempengaruhi kuantum ganti rugi yang mungkin diberikan (lihat perenggan 32, 34 & 37).

(6) Pembelaan keistimewaan bersyarat adalah tidak terpakai dalam kes ini kerana defendan telah gagal melaksanakan kewajipan berhati-hati yang munasabah dalam menyelenggara rekod yang tepat dan mengemaskini sistem awam dengan segera. Kelewatan selama 16 bulan dalam mengemaskini sistem tersebut merupakan satu kecuaian yang serius (lihat perenggan 35).

(7) Menurut s 5 Akta Prosiding Kerajaan 1956, defendan ketiga adalah bertanggungjawab secara vikarius sebagai majikan kepada defendan pertama dan prinsipal kepada D2 atas kegagalan mereka melaksanakan kewajipan berkanun di bawah Akta Kebankrapan 1967 dengan berhati-hati secara munasabah untuk memastikan bahawa rekod kebankrapan dalam sistem awam sentiasa dikemaskini dan tepat (lihat perenggan 40).

(8) Plaintif telah dianugerahkan sejumlah RM100,000 sebagai pampasan bagi kerosakan terhadap reputasi profesionalnya (termasuk kredibiliti, integriti dan kebolehpercayaannya) serta penghinaan, tekanan emosi dan kesulitan profesional yang telah dialaminya; manakala sejumlah RM20,000 telah dianugerahkan sebagai ganti rugi teruk kerana kelakuan defendan yang gagal membetulkan kesilapan dengan segera dan menunjukkan sikap tidak peduli terhadap akibat kecuaian mereka telah memburukkan lagi kemudaratan yang ditanggung plaintif. Oleh kerana tiada keterangan mengenai kerugian kewangan khusus, maka tiada ganti rugi khas diberikan (lihat perenggan 43–46).]

**Cases referred to**

*Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315, HC (refd)
*Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514, FC (refd)
*Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77, FC (refd)
*Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389, FC (refd)
*Siow Ching Yee (suing through his wife and litigation representative, Chau Wai Kin) v Columbia Asia Sdn Bhd* [2024] 3 MLJ 66, FC (refd)
*The Co-Operative Central Bank Ltd v KGV & Associates Sdn Bhd* [2008] 2 MLJ 233, FC (refd)
*Zulkiply bin Taib & Anor v Prabakar a/l Bala Krishna & Ors and other appeals* [2015] 2 MLJ 607, CA (refd)

**Legislation referred to**

Federal Constitution art 132
Government Proceedings Act 1956 ss 2, 5
Insolvency Act 1967 ss 70(1), 74

*R Mahendran Naidu (with Aida Serina bt Mohd Tazaai) (Dennis Mahen R and Aida) for the plaintiff.*
*Siti Syuhada Alwi (with Siti Norashikin Hassanor) (Attorney General's Chambers) for the defendant.*

**Roz Mawar J:**

INTRODUCTION

**[1]** The dignity of a person's name, painstakingly built over decades of professional service, can be undone by a single keystroke in our digital age. This case presents a stark illustration of how administrative errors in government records can cast a long shadow over a citizen's reputation and livelihood.

**[2]** The plaintiff, a chartered accountant of more than 40 years standing and managing partner of a firm serving over 2,000 clients, found himself in an extraordinary position. Despite having obtained an order on 7 December 2020 annulling his bankruptcy, he discovered some 16 months later that he was still listed as a bankrupt in the official insolvency database. This incorrect status surfaced at a particularly inopportune moment — when he attempted to open a bank account for a company where he served as director.

**[3]** This revelation set in motion a chain of events that would test the delicate balance between administrative convenience and individual rights, between

statutory duties and professional reputations. At its heart, this case examines the extent of responsibility that government departments bear when maintaining public records that can significantly impact citizens' lives and livelihoods.

**[4]** The circumstances raise two fundamental questions of law: whether the maintenance and publication of incorrect bankruptcy status can amount to defamation, and whether government departments owe a duty of care in maintaining accurate records that others rely upon. The answers to these questions have implications that extend far beyond the immediate parties to this litigation.

## THE PLEADED CASE

**[5]** The plaintiff is a businessman and chartered accountant with various director and shareholder positions in multiple companies. On 12 April 2022, the plaintiff applied to open a bank account with CIMB Bank Bhd ('the bank'). Despite having a bankruptcy discharge order dated 18 December 2020, the plaintiff pleaded that a bankruptcy search by the bank on 13 April 2022 incorrectly showed the plaintiff as bankrupt, which caused the bank to halt the bank account opening process.

**[6]** The plaintiff alleged that this error occurred due to the defendants' negligence in not updating their records properly, which the defendants admitted was due to a 'technical issue' in their system. The plaintiff claimed this caused damage to his reputation, business interests, and emotional distress, seeking various remedies including:

(a) general damages;

(b) aggravated/exemplary damages;

(c) punitive damages;

(d) public apology in national newspapers; and

(e) interest and costs.

**[7]** The defendants argued that they took reasonable steps to maintain accurate records, including:

(a) updating the bankruptcy status within 24 hours of receiving the cancellation order by the High Court on 8 December 2020;

(b) issuing notification letters regarding the bankruptcy cancellation; and

(c) taking prompt action to rectify the system when notified of the error in April 2022.

**[8]** The key legal defenses raised by the defendants included qualified privilege which they claimed applies because the information was provided as part of their official duties. They also pleaded that they are protected under s 74 of the Insolvency Act 1967. They highlighted that their system contains a disclaimer against liability for inaccuracies. Furthermore, their position is that the second defendant (the Insolvency Department Malaysia) lacks legal standing as it is not a legal entity. Additionally, the third defendant's (Government of Malaysia) vicarious liability is subject to the Government Proceedings Act 1956.

**[9]** The defendants sought dismissal of the case with costs, arguing the plaintiff has no reasonable cause of action and is not entitled to the claimed remedies.

**[10]** This case essentially centers on whether the defendants can be held liable for damages arising from temporary inaccurate bankruptcy status information in their system despite having taken steps to update their records.

THE EVIDENCE

**[11]** The facts of this case are largely undisputed. What remains for this court's determination is the legal characterisation of these events and their consequences. Upon hearing the oral testimonies of witnesses at trial and the relevant documents tendered, the chronology of events is as follows:

(a) 24 July 2020: a bankruptcy order was recorded against the plaintiff by the Kuala Lumpur High Court (Case No WA-29NCC-1396–03 of 2017);

(b) 17 August 2020: the plaintiff obtained a suspension order against the bankruptcy, but this information only reached the second defendant on 27 August 2020;

(c) 1 September 2020: the second defendant issued a notification to suspend the bankruptcy order and updated immigration restrictions to allow the plaintiff to travel;

(d) 7 December 2020: the Kuala Lumpur High Court annulled the bankruptcy order;

(e) 8 December 2020: the second defendant updated its internal system to reflect the annulment of the bankruptcy order within 24 hours;

(f) 28 December 2020: the plaintiff conducted a bankruptcy status search that confirmed his status as 'not bankrupt';

(g) 12 April 2022: the plaintiff attempted to open a bank account at CIMB Bank Bhd as the director of Tijarah Holding Sdn Bhd. The bank

informed him he was still listed as a bankrupt based on the search results procured from the second defendant's website;

(h) 13 April 2022: the plaintiff became aware of his inaccurate bankruptcy status vide email from the second defendant. The bankruptcy search result from the second defendant's website was attached thereto. The plaintiff then contacted the second defendant through his lawyers;

(i) 15 April 2022: the second defendant through its case officer (who testified as DW1) emailed the plaintiff's lawyers that she had updated the cancellation of the bankruptcy on 8 December 2020 and the action of the final notification letter, cancellation of immigration restrictions and return of excess has alreJady been made for the plaintiff's case. However, the second defendant would review the status of this case with the Information Technology Department at the headquarters regarding the system problems on Monday 18 April 2020; and

(j) 18 April 2022: the second defendant through DW1, updated the plaintiffs bankruptcy status in its system following his counsel's email. Stated was 'Segala kesulitan ini amatlah dikesali dan pihak kami memohon maaf di atas kesilapan teknikal yang berlaku kepada system kami'.

**[12]** From the evidence, for the process and procedures in updating the information of bankruptcy on their system, the second defendant is triggered by the receipt of High Court orders — such as bankruptcy declarations, suspensions or annulments. The second defendant verifies the authenticity of the High Court orders, often through the court's e-filing system.

**[13]** Then updates onto the system — Integrated Insolvency System ('INSIST') are made. INSIST which is an internal database maintained by the second defendant, is used to record, manage and reflect the bankruptcy statuses. INSIST serves as the authoritative source for the status of individuals under insolvency proceedings. The second defendant's officers rely on it for administrative functions such as notifying relevant parties and updating public-facing systems. The second defendant claimed that updates are performed within 24 hours of receiving valid High Court orders or the relevant notifications.

**[14]** The second defendant sends formal notifications to the relevant institutions such as financial institutions (to update credit and banking information), and government agencies (for eg Immigration Department to remove travel restrictions). Updates in INSIST do not automatically reflect in public-facing systems or reach third parties like financial institutions. So, the purpose of the notifications is to ensure that the third parties' respective systems accurately reflect the updated status. The second defendant sends formal

written notifications to their key stakeholders such as financial institutions and government agencies and employers. The notifications inform them of the changes in the bankruptcy status.

**[15]** Third parties like financial institutions must access the public search system by paying a fee to conduct the searches (RM12 via the website and RM10 at a kiosk) and submitting details of the individual's identification number, to retrieve the records. There is no direct subscription mechanism linking financial institutions to INSIST. They rely solely on the public-facing systems for updates, and notifications from the second defendant for direct updates of individuals that are under their watch or involved in transactions in the financial industry.

**[16]** The public may also have access to the system and the updates as they were available for a nominal fee though kiosks or the second defendant's website. These updates are linked to the internal database and may require synchronisation with other departments, such as the Information Technology Department ('IT').

**[17]** Based on the evidence, this court finds that while INSIST is updated within 24 hours of receiving valid High Court orders, the public-facing system (which the financial institutions and other third parties rely on) is not automatically synchronised. This technical gap creates a risk of outdated or inaccurate information being disseminated. In this case, the internal system was updated promptly on 8 December 2020 (following the High Court's annulment of the plaintiff's bankruptcy order of 7 December 2020) but the public-facing system continued to display the plaintiff as a 'bankrupt' until 18 April 2022.

**[18]** Although DW1 testified that the synchronisation and update on the public-facing system was the responsibility of the second defendant's IT, and that the error was attributed to a technical issue, it was (and still is) the responsibility of the second defendant. The admission to this and the apology were made by the second defendant through DW1. However, no comprehensive explanation was offered for the 16 month delay in the synchronisation.

**[19]** In this case, although DW1 testified for the defendants that written notifications are usually sent to financial institutions like the bank of the change and/or update in the status of the bankruptcy, there is no evidence produced with regards to the plaintiff. There is no evidence that the second defendant had issued the bank a formal notification pertaining to the plaintiff's change of status as a result of the High Court order annulling the bankruptcy order.

THIS COURT'S ASSESSMENT

**[20]** This court acknowledges that without a subscription mechanism, financial institutions as the bank here in this case, are dependent on the accuracy and timeliness of updates reflected in the second defendant's public-facing system. Their reliance on this definitely carries implications because not just concerning the bank and other financial institutions, but employers and other stakeholders as their heavy reliance is for, amongst others, to verify the creditworthiness or legal standing of individuals. Inaccuracies or delays in the public-facing system directly affect these third parties' ability to make informed decisions.

**[21]** INSIST is an internal database that functions as the primary recordkeeping tool for the second defendant but is not directly accessible to third parties. The bank, other financial institutions and stakeholders depend on the public-facing system or official notifications for information about bankruptcy statuses. The failure in this case highlights a critical flaw: the lack of automated synchronisation between INSIST and the public-facing system. This led to outdated information being displayed to the bank and third parties. This gap underscores the second defendant's responsibility to ensure robust and timely communication of status updates to prevent harm caused by such delays.

**[22]** Whilst the second defendant's officers like DW1 had no direct control over the process of synchronisation with the public-facing system which was under the IT, this court finds that the second defendant had failed to ensure the update made on INSIST was reflected accurately and timely on the public-facing system. The defendants had implied that the issue arose from an operation gap within IT. Be that as it may, it had resulted in an erroneous public record for 16 months.

**[23]** The defendants provided no evidence of mechanism to regularly audit or verify the accuracy of the public-facing search system, despite knowing its significant reliance by the bank, other financial institutions and third parties. There was a lack of preventive measure. There was also failure to mitigate the harm. The second defendant only rectified the error after the plaintiff brought it to its attention. This indicates a reactive rather than proactive approach, further contributing to the delay in the updates.

*Negligence*

Duty of care

**[24]** This court analyses the duty of care of the second respondent as the statutory authority for managing insolvency records. The second defendant is a statutory body tasked with maintaining accurate bankruptcy records and providing this information to the bank, other financial institutions and third parties. The bank had and continuously relied on the second defendant's public-facing system to make decisions. So, the accuracy of the information on the public-facing system is critically important. The second defendant owed a duty of care to ensure that both internal and public records were accurate and synchronized. This duty of care is owed to the plaintiff. As a professional accountant and managing partner of a reputable accounting firm, the plaintiff has a direct and foreseeable interest in the accuracy of his bankruptcy status. See *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389 and *The Co-Operative Central Bank Ltd v KGV & Associates Sdn Bhd* [2008] 2 MLJ 233.

Breach of duty of care

**[25]** There was a breach of that duty by failing to synchronise INSIST and the public-facing system that had allowed inaccurate status of the plaintiff in the records to persist for 16 months. While the defendants attributed the issue that had caused the problem to technical problems, no evidence was presented to show active efforts to identify or resolve the issue during this period. This court finds that the breach occurred when the defendants had failed to meet the standard of care expected of a reasonable entity in similar circumstances.

**[26]** With regard to the defendants' contention that it was due to a technical failure, they have not demonstrated that reasonable steps were taken to ensure the public-facing system's accuracy or to prevent delays caused by synchronisation errors. The lack of proactive monitoring or audits to identify and rectify discrepancies constitutes a breach of duty.

**[27]** Pertaining to the issue of the absence of malice, though there is no evidence of malice or deliberate intent to harm on the part of any of the defendants, negligence does not require malice. A lack of bad intention on the part of the defendants does not absolve them of their obligations to act reasonably in maintaining accurate public records.

**[28]** This court finds that there was also an unreasonable delay which is 16 months. It took 16 months to rectify the accuracy of the plaintiff's status. In this court's considered opinion, it falls below the standard of care expected from a statutory body (the second defendant). Had the plaintiff not attempted to open a bank account, one must ponder whether he would have remained

indefinitely declared a bankrupt, as it was only upon the plaintiff's grievance that the second defendant became aware of the non-synchronisation of the update. Thus, this court finds that the defendants breached their duty of care by failing to ensure the public-facing system accurately reflected the plaintiff's annulled bankruptcy status in a timely manner. See *Siow Ching Yee (suing through his wife and litigation representative, Chau Wai Kin) v Columbia Asia Sdn Bhd* [2024] 3 MLJ 66.

Causation and loss

**[29]** As a result of the defendants' negligence, the bank rejected the plaintiff's application to open a bank account as a director of Tijarah Holdings Sdn Bhd. This the plaintiff contended caused reputation harm, financial inconvenience, and professional embarrassment. The plaintiff testified to receiving inquiries and suspicion from clients and colleagues due to the incorrect bankruptcy status. This court rejects the defendants' argument that the plaintiff's losses were not entirely foreseeable or attributable to their error. The defendants had not shown that there were other alternative means for the financial institution, third parties or even the public to verify the plaintiff's updated status. The defendants knew or ought to have known that inaccuracies in the public-facing search system could cause harm to individuals listed as 'bankrupt' due to the significant reliance on the said system.

**[30]** The evidence in this case shows a direct causal link between the erroneous bankruptcy status in the public-facing system and the plaintiff's inability to open a bank account with the bank. That, as well as harm to the plaintiff's reputation and business dealings.

Defamation

**[31]** The plaintiff had also claim of defamation arising from the publication of the erroneous bankruptcy status. The first element for the plaintiff to fulfill is whether the words complained of are defamatory. The legal standard is that it is defamatory if the words tend to lower the plaintiff in the estimation of right-thinking members of society, expose him to hatred, contempt, or ridicule, or adversely affect his professional reputation. See the High Court case of *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315.

**[32]** It is the opinion of this court that the erroneous bankruptcy search results described the plaintiff as a 'bankrupt'. Being labeled a bankrupt implies financial irresponsibility, dishonour and discreditable conduct, particularly damaging for a professional chartered accountant with a reputable practice.

The word 'bankrupt' in its natural and ordinary meaning is defamatory of the plaintiff as it directly imputes financial incapacity and misconduct, tarnishing his professional reputation.

**[33]** There is no doubt whatsoever that the status of a 'bankrupt' was attributable to the plaintiff. His identification and personal details that clearly referred to him strengthen this court's finding that the defamatory statement unambiguously referred to him.

**[34]** The second element to succeed in a case for defamation is publication of the defamatory words to a third party. The defamatory bankruptcy search result was accessed by the bank during the plaintiffs attempt to open a bank account for Tijarah Holdings Sdn Bhd. Evidence at trial is that a bank officer of the bank had informed him of the result via email. The defendants' argument of limited circulation of the search result to the bank is untenable as our defamation law does not require widespread circulation. Communication to one person who understands its defamatory nature is enough. The absence of cross-examination of the plaintiff's testimony regarding the bank's receipt of the information further strengthens his claim. This court finds that the defamatory statement was published to a third party — the bank, this element is satisfied.

**[35]** The argument of qualified privilege by the defendants was considered by this court. Qualified privilege applies where a statement is made in the performance of a legal, moral, or social duty and communications to a party with a corresponding interest, provided there is no malice. This argument of qualified privilege is defeated if the plaintiff can show negligence or recklessness on the part of the defendants' handling of the publication. The delay in updating the public-facing system for 16 months, despite internal updates on INSIST, constitutes gross negligence. This court rules that the defence of qualified privilege is inapplicable as the defendants had failed to exercise reasonable care in maintaining accurate records and promptly updating the public-facing system.

**[36]** As to the defendants' submissions that there was a lack of malice on their part, in this case, the plaintiff did not allege malice. This court finds no evidence of bad faith or intentional harm. Nonetheless, negligence alone suffices to defeat qualified privilege in this context. The absence of malice does not exonerate the defendants from liability for negligent publication.

**[37]** The defendants additionally submitted that the publication was limited to the bank and should mitigate liability. It is this court's view that the limited circulation does not negate the plaintiff's claim but may influence the quantum of damages. The reputational harm was still significant, given his professional

standing and the reliance of third parties like the bank on the information published in the second defendant's public-facing system. The limited circulation affects damages but not liability.

Vicarious liability

**[38]** The plaintiff contended that the third defendant was liable for the acts of the first and second defendants as it was committed in the course of their employment. The plaintiff urged this court to find that the first defendant, a public officer employed by the third defendant (as stipulated under art 132 of our Federal Constitution) and that the second defendant operates as a government department established under the Ministry of Law. Their actions it was contended, fall under the third defendant's purview. The plaintiff highlighted that the third defendant as the employer and principal, was responsible for ensuring that its officers discharge their duties with due care. The law under s 5 of the Government Proceedings Act 1956 was referred, as per the excerpt below:

> The Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent.

**[39]** In their argument that the first and second defendants' negligence cannot be attributable to the third defendant, the defendants submitted that the second defendant is not a legal entity and cannot be sued independently — any claims related to the second defendant's actions must be directed to the third defendant. The defendants submitted that they had performed their duties in good faith, absence of any malice or intention to harm, thus the third defendant cannot be liable for negligence unless proven by the plaintiff to be systemic or egregious. They argued that the negligence was not directly linked to the course of employment but was an isolated administrative lapse due to technical issues.

**[40]** This court finds that the first defendant is a public officer within the definition of s 2 of the Government Proceedings Act 1956 and s 70(1) of the Insolvency Act 1967. The second defendant was tasked to performed its statutory duties under the Insolvency Act 1967. This unfortunate incident occurred whilst they were discharging their statutory duties under the Insolvency Act 1967 which included in the maintain bankruptcy records and ensuring their accuracy. The third defendant as the employer and principal bears the responsibility for ensuring its officers discharge these duties with reasonable care. The failure to update the plaintiff's status in the public-facing system is directly linked to the statutory responsibilities of the first and second defendants. The negligence occurred during the ordinary discharge of duties,

establishing a sufficient connection between the wrongful act and the scope of employment. The law under s 5 of the Government Proceedings Act 1956 unequivocally holds the third defendant liable for the wrongful acts committed by public officers within the scope of their duties.

**[41]** On the issue of the second defendant lacking a legal personality, this court finds that this fact strengthens the plaintiff's case against the third defendant. As the second defendant operates under the third defendant's authority, any liabilities arising from the actions are attributable to the third defendant. Even though the absence of malice is noted, the third defendant remains liable for negligent acts of its officers. Vicarious liability does not require malice or intentional wrongdoing; negligence suffices. Thus, the plaintiff's claim against the third defendant is allowed. See *Zulkiply bin Taib & Anor v Prabakar a/l Bala Krishna & Ors and other appeals* [2015] 2 MLJ 607.

Damages

**[42]** The plaintiff's claim for his reputational harm, financial inconvenience and professional embarrassment largely is now assessed by this court. Although his testimony remained uncontested on cross-examination, he still must satisfy this court evidence of the losses claimed. For reputational damage, no specific monetary figure or expert evidence was presented to quantify the damage to the plaintiff's reputation or professional goodwill. This court acknowledges that the intangible nature of reputation harm, but the plaintiff is expected to adduce evidence of lost clients, contracts, or business opportunities. Those were not provided during trial. However, he testified that there were client inquiries and suspicions and the rejection of the bank account application, which disrupted business dealings. This court does not see any challenge by the defendants to these facts.

**[43]** There was no pleaded quantum for general damages for reputational harm and professional inconvenience, nor submitted on. This court recognises that intangible harm can be inferred. in awarding the quantum to the plaintiff, this court considered his professional standing where being labelled a 'bankrupt' directly undermines his credibility, integrity and trustworthiness — those are essential traits for an accountant. The nature of the defamation where it was part of the public record that described the plaintiff as a 'bankrupt'. His professional livelihood depends on financial integrity. This court also took into account the impact on his reputation when he testified to the queries that had embarrassed him and humiliated him. The general damages are also for the professional inconvenience of being denied to open a bank account at the bank. There was an absence of mitigation on the part of the defendants. The

circulation of the defamatory statement, whilst limited in circulation (to the bank) but the impact was amplified by the plaintiff's professional visibility and reliance on credibility.

**[44]** General damages in this case is to compensate for the harm caused to the plaintiff's reputation, humiliation, emotional distress and professional inconvenience. This court, aware of the sums meted out in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 and *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77 (RM550,000 and RM2m respectively), is of the considered view that the plaintiff is entitled to RM100,000.

**[45]** For the aggravated damages prayed for by the plaintiff, this court regarded the absence of malice on the part of the defendants. Given that the defendants' conduct exacerbated the harm, such as failing to rectify the error promptly or showing indifference to the consequences of their negligence, this court awards RM20,000 as aggravated damages.

**[46]** No specific financial losses were shown by the plaintiff during trial. As special damages must be proven, this court must consider the evidence adduced. Substantial monetary awards require concrete evidence. Due to the absence of evidence to show specific financial losses, this court does not allow this prayer for special damages due to the negligence of the defendants.

**[47]** Costs of this trial in the amount of RM20,000 subject to allocateur-allocator fee. The defendants are ordered to pay the plaintiff the said amount for costs.

*Plaintiff's claim allowed; defendant's ordered to pay the plaintiff RM100,000 as general damages and RM20,000 as aggravated damages.*

Reported by Ashok Kumar